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BEFORE THE
HEARING PANEL OF THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
AS ENFORCEMENT AGENCY FOR SAN LUIS OBISPO COUNTY

In the Matter of:)	APPEAL OF NOTICE AND ORDER
)	NO. EA-2005-05
)	
JIM FILBIN AGGREGATES)	PUBLIC RESOURCES CODE § 44307
4398 SANTA FE ROAD)	
SAN LUIS OBISPO, CA)	Date: December 5, 2005
APN 076-371-012)	Time: 1:30 p.m.
)	

RESPONSE TO PETITIONER'S STATEMENT OF ISSUES

Introduction

Petitioner James P. Filbin ("Petitioner Filbin"), owner and operator of Jim Filbin
Aggregates, a solid waste facility located at 4398 Santa Fe Road, San Luis Obispo, California

1 93401 (APN 076-371-012) (the "Facility") has requested a hearing¹ before the Hearing Panel of
2 the California Integrated Waste Management Board ("CIWMB") pursuant to Public Resources
3 Code Section 44307.² The purpose of Petitioner Filbin's request for hearing is to appeal Notice
4 and Order No. EA-2005-05, issued to Petitioner Filbin by Respondent CIWMB, acting as the
5 Enforcement Agency ("EA") for San Luis Obispo County pursuant to Section 43205(a). A
6 request for a hearing must contain a "statement of the issues" that constitute the basis for the
7 appeal. Section 44310(a)(1). The EA must file a written response to the statement of issues
8 submitted by Petitioner Filbin and provide a copy of the response to him. Section 44310(a)(4).
9 This document constitutes the EA's response to the issues raised by Petitioner Filbin in his
10 request for a hearing. The EA will submit to the Hearing Panel and to Petitioner Filbin
11 additional evidence, authority and argument prior to or at the hearing on this appeal.

12 Factual Background

13 Respondent CIWMB is the Enforcement Agency for San Luis Obispo County. Section
14 43205(a). As EA, its duties in San Luis Obispo County include enforcing the state's solid waste
15 laws and regulations,³ enforcing the terms and conditions of solid waste facilities permits,
16 inspecting solid waste facilities, and inspecting solid waste handling activities and solid waste
17 disposal sites to determine whether such activities and sites are required to obtain a solid waste
18 facilities permit under applicable law and regulation. Section 43209(a), (h). Through evidence
19 to be submitted at the hearing, the EA will show that in the course of carrying out these duties in
20 September 2004, the EA observed solid waste handling activities and solid waste disposal at
21 Petitioner Filbin's Facility. The activities which the EA observed included the storage, transfer,
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24 ¹ A true and correct copy of Petitioner's request for a hearing is attached hereto as Exhibit "A."

25 ² Unless otherwise specified, all references to statutes are to the Public Resources Code.

26 ³ The Integrated Waste Management Act, Public Resources Code §§ 40000 et seq.; Title 14, California Code of
27 Regulations ("CCR"), Div. 7, commencing at § 17000; and Title 27, CCR, Division 2, commencing at § 20005.

1 processing or disposal of large quantities of construction and demolition debris and inert debris.
2 Such activities are regulated by CIWMB under its adopted regulations.⁴

3 Petitioner Filbin does not have a solid waste facilities permit or other authorization under
4 state solid waste laws and regulations to conduct such activities at the Facility. The EA's
5 repeated efforts to persuade Respondent Filbin to comply voluntarily with the C&D Regulations
6 were not successful, and on September 30, 2005 the EA issued Notice and Order No. EA-2005-
7 05 (the "Notice and Order") to Respondent Filbin. With respect to activities at the Facility, the
8 Notice and Order directs Respondent Filbin, among other things, to cease and desist accepting
9 Type A inert debris,⁵ to begin processing existing stockpiles of Type A inert debris by November
10 15, 2005, to complete such processing by February 15, 2006, and to remove all of the processed
11 material within 18 months from processing. Respondent Filbin subsequently appealed the
12 Notice and Order by filing his request for a hearing.

13 Response to Issues Raised by Petitioner

14 In his request for a hearing, Petitioner stated that that "the basis of the appeal is...:

- 15 1. "Material is being processed within 6 months of acquisition contrary to your
16 findings"
17 2. "The activities are protected by grandfathering dating 1979" [sic]
18 3. "Storage of material is not what is occurring"

19 Petitioner Filbin stated no other bases for the appeal.

20 The EA responds to these issues as follows:
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23 ⁴ Construction and Demolition and Inert Debris Transfer/Processing Regulatory Requirements, Title 14, CCR, §§
24 17380 et seq., and Construction and Demolition and Inert Debris Disposal Regulatory Requirements, Title 14, CCR,
25 §§ 17387 et seq. (These regulations will be referred to collectively herein as the "C&D Regulations.")

26 ⁵ "Type A inert debris" includes solid waste such as concrete, fully cured asphalt, crushed glass, brick, slag, plaster
27 and other materials which do not contain excessive levels of soluble pollutants. Title 14, CCR, § 17388(k)(1).

- 1 1. “Material is being processed within 6 months of acquisition contrary to your
2 findings” – The EA will submit evidence at the hearing to show that material is not
3 being processed within six months from being deposited at the Facility. The evidence
4 will include the EA’s observations that the stockpiles of solid waste, including Type
5 A inert debris, have been in place for more than six months and that Respondent
6 Filbin has failed to provide any evidence that any of the materials have been
7 processed or are being processed. A facility that does not have a solid waste facilities
8 permit or other authorization under state solid waste laws and regulations that
9 receives Type A inert debris and stores it for more than six months without sorting
10 and processing it for resale or reuse is deemed to have disposed the material and is
11 subject to enforcement. Title 14, CCR, § 17381.1(e)(1).
- 12 2. “The activities are protected by grandfathering dating 1979” – The EA presumes that
13 Petitioner Filbin is asserting that the solid waste handling and disposal activities
14 occurring at the Facility began in 1979 and that state solid waste laws and regulations
15 enacted after 1979 do not apply to those activities. There is no statute, constitutional
16 provision or common law principle to support such an assertion. The EA will submit
17 authority at the hearing to show that Petitioner Filbin does not have a vested right to
18 continue solid waste handling and disposal activities at the Facility in a manner that is
19 prohibited by state solid waste laws and regulations, whether or not the activity
20 predated the enactment of the laws and regulations. The laws and regulations which
21 Petitioner Filbin violated, as set out in the Notice and Order, are reasonable
22 regulations of his use of his property, enacted by the legislature and adopted by
23 CIWMB to protect the public health and safety and the environment, among other
24 purposes.
- 25 3. “Storage of material is not what is occurring” – “Storage” is defined in the C&D
26 Regulations as “the holding or stockpiling of processed or unprocessed C&D
27 debris,...inert debris or recyclable materials for a temporary period, at the end of

1 which the material either is recycled or is transferred elsewhere. Storage of C&D
2 debris,...inert debris or recyclable materials for periods exceeding the limits set in
3 this Article [i.e., the Construction and Demolition and Inert Debris
4 Transfer/Processing Regulatory Requirements] is deemed to be disposal and shall be
5 regulated as set forth in the [regulations governing the disposal of solid waste]." Title
6 14, CCR, § 17381(ee). Under this definition, the solid waste and any recyclable
7 materials located at the Facility are either stored or disposed. Regulatory
8 requirements of the C&D Regulations apply in either case. The EA will submit
9 evidence at the hearing to show that Type A inert debris has been stored at the
10 Facility for more than six months without having been sorted or processed for resale
11 or reuse, and, therefore, has been disposed. Accordingly, Petitioner Filbin is required
12 to obtain a solid waste facilities permit in order to carry out such a disposal activity.
13 Title 14, CCR, § 17388.4.

14
15 Dated: November 18, 2005

16
17 Respectfully submitted,

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19 Michael L. Bledsoe
20 Senior Staff Counsel
21 Attorney for CALIFORNIA INTEGRATED
22 WASTE MANAGEMENT BOARD AS
23 ENFORCEMENT AGENCY FOR SAN LUIS
24 OBISPO COUNTY
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EXHIBIT "A"

Integrated Waste Management Agency
State of California

October 31 2005

Re Appeal
Jim Filbin Aggregates
James P Filbin

Dear Sirs,

This is an appeal from your order served Oct 15 2005 at the property of Jim Filbin;

The basis of the appeal is that

Material is being processed within 6 months of acquisition contrary to your findings

The activities are protected by grandfathering dating 1979

Storage of material is not what is occurring

Please advise of hearing procedures

Yours truly

Jim Filbin